

IN THE CIRCUIT COURT FOR COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois,

Plaintiff,

v.

No.

KCBX TERMINALS COMPANY,  
a North Dakota corporation,  
(3259 East 100<sup>th</sup> Street Site),

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois, on her own motion, complains of the Defendant KCBX  
TERMINALS COMPANY, a North Dakota corporation (the "Defendant"), as follows:

COUNT I

WATER POLLUTION

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa  
Madigan, Attorney General of the State of Illinois, on her own motion, against the Defendant,  
pursuant to the terms and provisions of Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and  
(e) (2012).

2. The Illinois Environmental Protection Agency (the "Illinois EPA") is an  
administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4  
(2012), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, the Defendant has been and is a North Dakota corporation qualified to transact business in the State of Illinois. It is registered with the Illinois Secretary of State's Office as a foreign corporation.

4. Between at least September 22, 2006 through the date of the filing of this Complaint, and on such other dates better known to the Defendant, the Defendant has operated and continues to operate a bulk solid materials transloading facility located at 3259 East 100<sup>th</sup> Street, Chicago, Cook County, Illinois (the "North Site") for petroleum coke and coal. The North Site comprises approximately 47 acres and is bound by the Calumet River to the East.

5. Petroleum coke, also known as "pet coke," is a by-product of petroleum refining that is primarily utilized as a replacement fuel or fuel blend for coal-fired power plants and cement kilns. Petroleum coke generally has a very high carbon content (90-95 percent), contains some sulfur and may include trace elements of metals such as vanadium, nickel, chromium and lead.

6. At all times relevant to this Complaint, the Defendant has received and continues to receive petroleum coke and coal by rail, truck, barge or vessel, which is stored in large piles at the North Site and then is moved off-site by the same modes of transportation.

7. At all times relevant to this Complaint, the Defendant has maintained a permanent, fixed-pole water spray system consisting of 19 water cannons set on poles approximately 65 feet above ground to apply water to the exteriors of the piles of petroleum coke and coal located at the North Site. The Defendant applies water daily to the petroleum coke and coal piles unless freezing or other mitigating conditions exist.

8. At all times relevant to this Complaint, the Defendant utilized a portable water cannon mounted on a water truck to water areas not covered by the pole-mounted water spray system.

9. At all times relevant to this Complaint, piles of petroleum coke and coal at the North Site were uncovered and exposed to the environment, including precipitation and stormwater, as well as water from the pole-mounted water spray system and the water truck. A retention pond exists in the southwestern corner of the North Site.

10. On September 22, 2006, the Illinois EPA issued the Defendant a National Pollutant Discharge Elimination System ("NPDES") Permit for the North Site, which expired on August 31, 2011. On May 29, 2013, the Illinois EPA issued the Defendant a renewed NPDES Permit for the North Site, which expires on April 30, 2018 (the "Renewed NPDES Permit"). Like the September 22, 2006 NPDES Permit for the North Site, the Renewed NPDES Permit only authorizes discharges, under certain specified conditions, from Outfall 001 at the North Site to the Calumet River.

11. On November 11, 2013, the Illinois EPA inspected the North Site:

12. On November 11, 2013, and such other dates better known to the Defendant, the petroleum coke and coal piles at the North Site were separated from the Calumet River by a narrow concrete walkway, approximately five (5) feet in width, that runs along the perimeter of the North Site and the Calumet River. The concrete walkway is lower than the piles of petroleum coke and coal. The Defendant has utilized a sand bag barrier at the edge of the concrete walkway to attempt to prevent stormwater and other water containing petroleum coke and/or coal from entering the Calumet River.

13. On November 11, 2013, and such other dates better known to the Defendant, substantial cracks existed in the concrete walkway, and several of the sand bags on the concrete walkway were missing or out-of-place, creating pathways for stormwater or other water containing petroleum coke or coal to flow from the North Site into the Calumet River.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

16. The Defendant is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

18. The stormwater and other water containing petroleum coke and coal at the North Site constitute "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), provides the following definition:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

21. The Calumet River constitutes "waters" as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

22. The threatened or actual discharge of stormwater and other water containing petroleum coke and coal from the North Site that flows into the Calumet River tends to cause a nuisance because such discharges negatively impact commercial and recreational uses of the river, including coating boats with such material and causing floating debris and bottom deposits, and render the waters harmful, detrimental or injurious to fish and other aquatic life, thereby causing or tending to cause water pollution, as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

23. By threatening, causing or allowing the discharge of stormwater or other water containing petroleum coke and/or coal from the North Site into the Calumet River in precipitation events, including rain storms and snow melt, and from water cannon usage, so as to cause or tend to cause water pollution, the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

24. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendant, KCBX TERMINALS COMPANY:

1. Finding that the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

2. Enjoining the Defendant from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

3. Ordering the Defendant to take immediate action to correct the violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendant for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendant, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

## COUNT II

### WATER POLLUTION HAZARD

1-21. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 22 of Count I as paragraphs 1 through 21 of this Count II.

22. Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), provides as follows:

No person shall:

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(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

23. By storing petroleum coke and coal at the North Site with inadequate barriers to prevent stormwater and other water containing petroleum coke and/or coal from flowing into the Calumet River, the Defendant deposited contaminants upon the land in such a place and manner as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

24. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendant, KCBX TERMINALS COMPANY:

1. Finding that the Defendant violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);

2. Enjoining the Defendant from any further violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
3. Ordering the Defendant to take immediate action to correct the violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), including, but not limited to, removing all deposits of petroleum coke and coal that are creating a water pollution hazard;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendant for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Defendant, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and
6. Granting such other relief as this Court deems appropriate and just.

### **COUNT III**

#### **VIOLATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM ("NPDES") PERMIT PROGRAM**

1-19. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13, 15 through 18 and 20 through 21 of Count I as paragraphs 1 through 19 of this Count III.

20. Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), provides as follows:

No person shall:

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- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established



under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

21. Pursuant to the authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2012), the Illinois Pollution Control Board (the "Board") has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle C, Chapter 1 ("Board Water Pollution Regulations").

22. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

23. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

24. Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14), provides the following definition:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

25. The concrete walkway located between the piles of petroleum coke and coal and the Calumet River along the Eastern perimeter of the North Site constitutes both a conveyance

and a conduit, and thus is a "point source" as that term is defined in Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14).

26. At no time did the Defendant receive an NPDES permit from the Illinois EPA authorizing the discharge of stormwater and other water from the concrete walkway at the North Site into the Calumet River.

27. By failing to maintain barriers to prevent water containing petroleum coke and coal from discharging from the concrete walkway at the North Site into the Calumet River, the Defendant caused, threatened or allowed the discharge of contaminants from a point source into a water of the State without an NPDES permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

28. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendant, KCBX TERMINALS COMPANY:

1. Finding that the Defendant violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

2. Enjoining the Defendant from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Defendant to take immediate action to correct the violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) against the Defendant for each day during which each violation of the Act and any NPDES program-related regulation of the Board continued;

5. Ordering the Defendant, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

#### **COUNT IV**

##### **FAILURE TO CONTROL SPILLAGE OF MATERIALS**

1-21. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count IV.

22. Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b), provides as follows:

Spills: All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

23. At all times relevant to the Complaint, no catchment area, relief vessel or entrapment dike existed along the entire southern and eastern perimeters of the North Site bordering and directly adjacent to the Calumet River.

24. By failing to take reasonable measures to prevent stormwater and other water containing contaminants from spilling into the Calumet River, the Defendant violated Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b), and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

25. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendant, KCBX TERMINALS COMPANY:

1. Finding that the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b);

2. Enjoining the Defendant from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b);

3. Ordering the Defendant to take immediate action to correct the violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Defendant for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendant, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Granting such other relief as this Court deems appropriate and just.

### COUNT V

#### OPEN DUMPING OF WASTE

1-13. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 11 and 15 through 16 of Count I as paragraphs 1 through 13 of this Count V.

14. Section 21(a) of the Act, 415 ILCS 5/21(a) (2012), provides, in pertinent part, as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

15. Section 3.305 of the Act, 415 ILCS 5/3.305 (2012), provides as follows:

“Open Dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

16. Section 3.385 of the Act, 415 ILCS 5/3.385 (2012), provides as follows:

“Refuse” means waste.

17. Section 3.535 of the Act, 415 ILCS 5/3.535 (2012), provides, in pertinent part, as follows:

“Waste” means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from

industrial, commercial, mining and agricultural operations, and from community activities. . . .

18. On November 21, 2013, and such other dates better known to the Defendant, a debris pile consisting of petroleum coke, concrete, stone and metal was located in the northeastern portion of the North Site. The debris pile was not located in the active area of the North Site and had been at the North Site for approximately two months. The debris pile constitutes discarded solid material from commercial operations and thus is "waste" as that term is defined by Section 3.353 of the Act, 415 ILCS 5/3.353 (2012) and "refuse" as that term is defined by Section 3.385 of the Act, 415 ILCS 5/3.385 (2012).

19. Section 3.185 of the Act, 415 ILCS 5/3.185 (2012), provides as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

20. Section 3.460 of the Act, 415 ILCS 5/3.460 (2012), provides as follows:

"Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

21. The Defendant caused and/or allowed the deposit or placing of waste -- the debris pile -- on the North Site in a manner that exposed the waste to the environment. The North Site is therefore a "disposal site" as defined in Sections 3.185 and 3.460 of the Act, 415 ILCS 5/3.185 and 3.460 (2012).

22. Section 3.445 of the Act, 415 ILCS 5/3.445 (2012), provides, in pertinent part, as follows:

"Sanitary Landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580. . . .

23. At all times relevant to this Complaint, the North Site was not permitted by the Illinois EPA for the disposal of waste and thus did not fulfill the requirements of a sanitary landfill as defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2012).

24. By causing and/or allowing waste to be deposited and/or placed at the North Site which was not permitted for the disposal of waste, the Defendant caused and/or allowed the open dumping of waste, thereby violating Section 21(a) of the Act, 415 ILCS 5/21(a) (2012).

25. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent statutes and regulations will continue unless and until this Court grants equitable relief in the form of a preliminary injunction, and, after trial, a permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary injunction and, after trial, a permanent injunction in favor of Plaintiff, and against the Defendant, KCBX TERMINALS COMPANY:

1. Finding that the Defendant violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012);

2. Enjoining the Defendant from any further violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2012);

3. Ordering the Defendant to take immediate action to correct the violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2012);

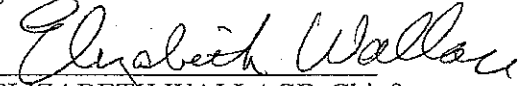
4. Assessing against the Defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Defendant, pursuant to 415 ILCS 5/42(f) (2012), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

6. Ordering such other relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. LISA MADIGAN, Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
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